UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte TODD KILLIAN and PHILIP THRIFT

Appeal 2007-3049
Application 09/713,432
Technology Center 2100

Decided: December 11, 2007

Before LANCE LEONARD BARRY, HOWARD B. BLANKENSHIP, and STEPHEN C. SIU, *Administrative Patent Judges*.

SIU, *Administrative Patent Judge*.

DECISION ON APPEAL

I. STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 1-10 and 16-19. We have jurisdiction under 35 U.S.C. § 6(b). We reverse.

A. Invention

1The invention at issue involves customizing television content. Typically, television content is targeted to broad groups of viewers based on geographical location or to narrow groups of viewers based on more specific demographics. Targeting audiences by geographical location may result in overly broad customization. Conversely, targeting audiences by specific demographic criteria may result in large segments of the population not receiving the television content. (Spec. 2).

In contrast, Appellants' invention provides a system in which television content is targeted to each viewer. This allows a television service provider to target a particular viewer associated with a viewer profile. (*Id.* 3).

B. Illustrative Claims

Claim 1, which further illustrates the invention, follows.

1. An apparatus for customizing television content operable to run on a computing platform electrically coupled to a receiver which is electrically coupled to a display device, the apparatus operable to receive supplemental data from a supplemental data database maintained by a television service provider, the apparatus comprising:

a television tuner/decoder operable to receive television signals from the television service provider and decode the received television signal;

an input device operable with said television tuner/decoder enabling a viewer to select for viewing one television signal received by said television tuner/decoder;

a supplemental data extractor operable to receive supplemental data from the television service provider;

a profile database operable to store a viewer profile;

a filter module electrically coupled to said profile database and to the supplemental data extractor, said filter module operable to access the viewer profile and the supplement data and, in response, to select a preferred display component according to the one television signal selected by the viewer via said input device, the viewer profile and the supplemental data, the preferred display component consisting of supplemental data selected by said filter module according to the viewer profile from among plural supplemental data corresponding to the one television signal selected by the viewer operable to target a particular viewer relative to other viewers by supplementing television content; and

an overlay disposed proximate to the display device and remote from the television service provider, said overlay coupled to said television tuner/decoder and to said filter module to substantially simultaneously receive the decoded television signal and the preferred display component, said overlay operable to integrate said decoded television signal and said preferred display component for combined display via a display device.

C. Rejection

Claims 1-10 and 16-19 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,236,395 ("Sezan") and U.S. Patent No. 5,485,221 ("Banker").

II. ISSUE

"Rather than reiterate the positions of parties *in toto*, we focus on the issue therebetween." *Ex Parte Filatov*, No. 2006-1160, 2007 WL 1317144,

at *2 (BPAI 2007). The question of obviousness is "based on underlying factual determinations including . . . what th[e] prior art teaches explicitly and inherently . . . ." *In re Zurko*, 258 F.3d 1379, 1383 (Fed. Cir. 2001) (citing *Graham v. John Deere Co.*, 383 U.S. 1, 17-18, (1966); *In re Dembiczak*, 175 F.3d 994, 998 (Fed. Cir. 1999); *In re Napier*, 55 F.3d 610, 613 (Fed. Cir. 1995)). "In rejecting claims under 35 U.S.C. § 103, the examiner bears the initial burden of presenting a *prima facie* case of obviousness." *In re Rijckaert*, 9 F.3d 1531, 1532 (Fed. Cir. 1993) (citing *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992)). "'A *prima facie* case of obviousness is established when the teachings from the prior art itself would appear to have suggested the claimed subject matter to a person of ordinary skill in the art.'" *In re Bell*, 991 F.2d 781, 783 (Fed. Cir. 1993) (quoting *In re Rinehart*, 531 F.2d 1048, 1051 (CCPA 1976)).

Here, the Examiner finds that claim 1 and claim 6 are unpatentable over Sezan and Banker. (Ans. 4-11). Appellants dispute the Examiner's position and assert that Sezan and Banker fail to disclose a television signal selected by a user and supplemental data selected according to a viewer profile and the user selected television signal. (Reply Br. 4).

The Examiner asserts that "the Banker et al. reference teaches a system wherein the subscriber has the capability to select any combination of video and supplemental data (such as text data) for display on a television." (Ans. 15). The Examiner further asserts that Sezan "teaches generally a system for selecting content for display to a viewer based upon

the viewer's profile." (*Id.*) Thus, a user selects a television signal in the Banker reference, and a viewer profile selects data content (i.e., a television signal) in Sezan. However, the Examiner fails to identify a teaching in either Banker or Sezan of data (i.e., supplemental data) being selected according to the viewer profile and corresponding to the user selected television signal.

To establish prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981 (CCPA 1974). Here, the Examiner has not established that Banker and Sezan disclose a "preferred display component" consisting of supplemental data selected according to a viewer profile from plural supplemental data corresponding to the one television signal selected by the viewer.

Therefore, we reverse the rejection of claim 1 and 6, and of claims 2-5, 7-10, and 16-19, which depend therefrom.

III. ORDER

In summary, the rejection of claims 1-10 and 16-19 under § 103(a) is reversed.

REVERSED

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